

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

THE GENERAL STORE, INC.,
Petitioner,

v.

RICHARD VAN LOAN,
Respondent.

No. CV-06-103-FVS

ORDER

THIS MATTER comes before the Court based upon the petitioner's request for judicial review of the revocation of its firearms dealer's license. The petitioner is represented by Mr. Richard E. Gardiner; the respondent by Assistant United States Attorney Rolf H. Tangvald.

BACKGROUND

The General Store, Inc. ("General Store") is located in Spokane, Washington. General Store holds a federal firearms dealer's license which is subject to the requirements of the Gun Control Act of 1968, Pub.L. No. 90-618, 82 Stat. 1213 (codified as amended at 18 U.S.C. §§ 921-930). Among other things, the Gun Control Act requires licensed dealers to "maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe." 18 U.S.C. § 923(g)(1)(A). One of the regulations promulgated by the Attorney General is 27 C.F.R. §

1 478.125. Paragraph (e) of § 478.125 provides, in part, that a
2 licensed dealer "shall enter into a record each receipt and
3 disposition of firearms." The record required by § 478.125(e) must be
4 bound. *Id.* The parties refer to the bound record as an Acquisition
5 and Disposition ("A&D") Book. Section 478.125(e) prescribes both the
6 type of information that a licensed dealer must record in its A&D Book
7 and the format in which the information must be recorded. *Id.*

8 General Store has been inspected by the Bureau of Alcohol,
9 Tobacco, Firearms and Explosives ("ATF") on a number of occasions.
10 During 2000 and 2001, inspectors issued reports alleging multiple
11 violations, including a failure to maintain adequate records
12 concerning the receipt and disposition of firearms. This led to
13 meetings between representatives of General Store and ATF officials.
14 At these meetings, participants discussed the alleged violations and
15 the steps General Store needed to take in order to fulfill its duties
16 as a licensed dealer.

17 Another ATF inspection occurred during January of 2003.
18 Inspectors observed practices that allegedly violate 27 C.F.R. §
19 478.125 and 18 U.S.C. § 922(b)(2). The latter makes it unlawful for a
20 licensed dealer to sell or deliver:

21 any firearm to any person in any State where *the purchase or*
22 *possession by such person of such firearm would be in*
23 *violation of any State law or any published ordinance*
24 *applicable at the place of sale, delivery or other*
25 *disposition, unless the licensee knows or has reasonable*
cause to believe that the purchase or possession would not
be in violation of such State law or such published
ordinance[.]

26 (Emphasis added.) The results of the inspection were communicated to

1 Richard Van Loan, who serves as the Director of Industry Operations
2 for the Seattle Field Division. On August 6, 2004, he issued a Notice
3 of Revocation. General Store requested an administrative hearing,
4 which was held on January 25, 2005. On February 16, 2006, Mr. Van
5 Loan issued both "Findings and Conclusions" and a "Revocation of
6 Firearms License." Believing he erroneously revoked its firearms
7 dealer's license, General Store filed a timely petition for judicial
8 review. 18 U.S.C. § 923(f)(3). The matter comes before the Court
9 based upon the parties' cross motions for summary judgment.

10 **RULE 56**

11 Summary judgment is appropriate only if "there is no genuine
12 issue as to any material fact and . . . the moving party is entitled
13 to a judgment as a matter of law." Fed.R.Civ.P. 56(c). A material
14 fact is one "that might affect the outcome of the suit under the
15 governing law[.]" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248,
16 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). A fact may be considered
17 disputed if the evidence is such that the fact-finder could find that
18 the fact either existed or did not exist. See *id.* at 249, 106 S.Ct.
19 at 2511 ("all that is required is that sufficient evidence supporting
20 the claimed factual dispute be shown to require a jury . . . to
21 resolve the parties' differing versions of the truth" (quoting *First*
22 *National Bank of Arizona v. Cities Serv. Co.*, 391 U.S. 253, 288-89, 88
23 S.Ct. 1575, 1592, 20 L.Ed.2d 569 (1968))). Here, except as indicated
24 below, the facts upon which the Court relies are either undisputed or
25 established by evidence that permits but one conclusion concerning the
26 fact's existence.

1 **UNDISPUTED FINDINGS OF FACT**

2 Mr. Van Loan made a number of findings concerning the manner in
3 which General Store recorded the movement of firearms and processed
4 applications for pistols. General Store acknowledges that it engaged
5 in the following practices prior to the 2003 inspection:

6 1. Upon shipping firearms to manufacturers and gunsmiths for
7 repairs, General Store failed to record outward-bound firearms as
8 dispositions in its A&D Books. Upon receiving repaired firearms from
9 manufacturers and gunsmiths, General Store failed to record inward-
10 bound firearms as acquisitions.

11 2. Upon the receipt of a firearm from a person who *did not* hold a
12 federal firearms license ("FFL"), General Store frequently failed to
13 record the person's address in its A&D Books. Upon the receipt of a
14 firearm from a person who *did* hold a FFL, General Store frequently
15 failed to record the person's FFL number in its A&D Books.

16 3. At the time of the 2003 inspection, General Store could not
17 account for 88 firearms that were supposed to be in its inventory.
18 Its A&D Books did not list the missing firearms as dispositions.

19 4. General Store recovered some of the firearms that it had
20 reported as stolen. General Store did not record the recovered
21 firearms as acquisitions in its A&D Books.

22 5. General Store did not send copies of applications to purchase
23 pistols to the chief of police of the applicant's city of residence
24 (if the applicant resided in a city) or to the county sheriff of the
25 applicant's county of residence (if the applicant did not reside in a
26 city). Instead, no matter where the applicant resided, General Store

1 sent copies to the Chief of Police of the City of Spokane.

2 **DISPUTED CONCLUSIONS OF LAW**

3 Mr. Van Loan concluded that the first four practices constituted
4 willful violations of 27 C.F.R. § 478.125(e). He concluded that the
5 fifth practice constituted a willful violation of 18 U.S.C. §
6 922(b)(2). General Store disagrees with his conclusions. According
7 to General Store, its former practices either did not violate federal
8 law or, to the extent they did, were not willful violations.

9 **STANDARD OF REVIEW**

10 Review is de novo. 18 U.S.C. § 923(f)(3). A persuasive
11 explanation of the standard is set forth in *Stein's, Inc. v.*
12 *Blumenthal*, 649 F.2d 463 (7th Cir.1980) ("*Stein's, Inc.*"). In that
13 case, the Seventh Circuit said that a reviewing court "need not accord
14 any particular weight to the [ATF's] findings and decision." *Id.* at
15 467. Nevertheless, a reviewing court may "accord them such weight as
16 it believes they deserve." *Id.* While the Ninth Circuit has not
17 explicitly embraced this part of the Seventh Circuit's opinion, it has
18 cited *Stein's, Inc.* with approval. See, e.g., *Cucchiara v. Sec'y of*
19 *the Treasury*, 652 F.2d 28, 30 n.1 (9th Cir.1981); *Perri v. Dep't of*
20 *the Treasury*, 637 F.2d 1332, 1335 (9th Cir.1981).

21 **THE MEANING OF THE TERM "WILLFULLY"**

22 "The Attorney General may, after notice and opportunity for
23 hearing, revoke any license issued under [18 U.S.C. § 923] if the
24 holder of such license has willfully violated [a] provision of
25 [Chapter 44 of Title 18] or [a] rule or regulation prescribed by the
26 Attorney General under [Chapter 44.]" 18 U.S.C. § 923(e) (modified to

1 include the specific section and chapter to which the terms "this
2 section" and "this chapter" refer). The term "willfully" was added by
3 the Firearms Owners' Protection Act of 1986 ("FOPA"), Pub.L. No.
4 99-308, 100 Stat. 449. In his Findings and Conclusions, Mr. Van Loan
5 defined the term in the following manner. "A firearms licensee's
6 violations are willful," he wrote, "if the licensee knows its legal
7 obligations and purposefully disregards them or is plainly indifferent
8 to the requirements of law." (Findings and Conclusions, ¶ 36, at
9 p.13.) According to General Store, this is an erroneous statement.
10 Although General Store concedes that Mr. Van Loan's definition is
11 consistent with cases decided before FOPA, *see, e.g., Perri*, 637 F.2d
12 at 1336, General Store argues that these cases were effectively
13 overruled by FOPA. *See Bryan v. United States*, 524 U.S. 184, 190, 118
14 S.Ct. 1939, 1944, 141 L.Ed.2d 197 (1998) (approving a jury instruction
15 which stated, in part, that a "person acts willfully if he acts
16 intentionally and purposely and with the intent to do something the
17 law forbids, that is, with the bad purpose to disobey or to disregard
18 the law"). Relying upon *Bryan*, General Store argues that ATF may not
19 revoke its federal firearms dealer's license absent "purposeful,
20 intentional conduct." (Petitioner's Memorandum in Support of Motion
21 for Summary Judgment, at 10.) However, this argument has been
22 rejected by every circuit to consider it. *See, e.g., RSM, Inc. v.*
23 *Herbert*, 466 F.3d 316, 320-22 (4th Cir.2006); *Article II Gun Shop,*
24 *Inc., v. Gonzales*, 441 F.3d 492, 497-98 (7th Cir.2006). There is no
25 reason to think the Ninth Circuit will do otherwise. Thus, the Court
26 is satisfied that *Perri* and *Cucchiara* remain valid and that they

1 accurately state the law of this circuit. A licensed dealer acts
2 willfully when he "understands the requirements of the law, but
3 knowingly fails to follow them or [i]s indifferent to them." *Perri*,
4 637 F.2d at 1336 (citations omitted).

5 **FIREARMS PRESENTED FOR REPAIR**

6 Customers took firearms to General Store to have them repaired.
7 On some occasions, General Store performed the repairs. On other
8 occasions, General Store transferred the firearms to a gunsmith or the
9 company that manufactured the firearms. General Store acknowledges
10 that this event constituted a disposition within the meaning of 27
11 C.F.R. § 478.125(e) and that a disposition must "be recorded by the
12 licensed dealer not later than 7 days following the date of such
13 transaction." *Id.* Upon completion of the repairs, the manufacturer
14 or gunsmith returned the firearms. General Store acknowledges that
15 this event constituted an acquisition within the meaning of §
16 478.125(e) and that an acquisition must "be recorded not later than
17 the close of the next business day following the date of such . . .
18 acquisition." *Id.* Prior to the 2003 inspection, General Store did
19 not record the transfer of firearms to manufacturers and gunsmiths as
20 a disposition in its A&D Book nor did it record the receipt of
21 returning firearms as an acquisition in its A&D Book. While General
22 Store concedes that its failure to do so violated § 478.125(e),
23 General Store argues that the violation was not willful. This
24 argument is unpersuasive.

25 ATF inspected General Store's inventory of firearms and related
26 records during 2000 and 2001. There is some indication that, during

1 the 2000 inspection and subsequent warning conference, ATF and General
2 Store discussed the latter's record-keeping obligations with respect
3 to firearms that it shipped to third parties for repair. In any
4 event, the issue arose again during 2001. ATF inspectors observed a
5 firearm "leaning against the store's inventory[.]" (2001 Report of
6 Violations, GX-11, at 1.) According to William Barany, one of General
7 Store's officers, "It was a customer's gun that just came in for
8 sights and was 'not part of the store's inventory.'" *Id.* The
9 inspectors were not satisfied with his explanation and cited General
10 Store for a violation of its record-keeping obligations. Moreover,
11 they required the following "Corrective Action":

12 Firearms acquired for gunsmithing, repairs, sights, or any
13 other reason should be recorded by some one [sic] or in some
14 way so that firearms returned or otherwise disposed on a
 different business day can be recorded, as required by the
 Gun Control Act.

15 (GX-11, at 1.) After the 2001 inspection, General Store used two
16 methods to record the movement of firearms that it received for
17 repairs. If General Store transferred the firearms to a manufacturer
18 or gunsmith, General Store recorded the transfer and return on forms
19 that it kept in its receiving department. If General Store performed
20 the repairs, General Store recorded the transaction in a Firearms
21 Repair Log. It appears that General Store began using the Log on or
22 about October 20, 2001. Near the top of the front page is the
23 handwritten statement "ANY FIREARM ON PREMIS OVERNITE [sic] MUST BE
24 ENTERED." (LX 1A, at 1.) This statement is followed by the initials
25 "WB." *Id.* In all probability, the initials are those of William
26 Barany. Below his initials, near the bottom of the page, the

1 following warning is printed in a box:

2 If any firearm logged into this Gunsmith's Firearms Repair
3 Log is delivered to anyone other than the person who brought
4 it in for repair, an entry MUST be made in your permanent
5 Firearms Acquisition and Disposition Book ("Bound Book"),
and a Form 4473 filled out and filed just as though the gun
had been sold.

6 *Id.* (underlining added by unknown person; capitals in original form).
7 The presence of both underlining and handwritten comments on the front
8 page of the Log indicates that General Store was aware of the warning
9 when it began using the Log. The warning put General Store on notice
10 of its duty to record firearms being transferred to manufacturers and
11 gunsmiths as dispositions in its A&D Book. The warning was reinforced
12 by the letter that ATF sent to General Store on or about January 25,
13 2002. (GX 12, at 1.) This letter reiterated allegations contained in
14 the 2001 Report of Violations.

15 Despite notice, General Store did not comply with § 478.125(e) by
16 making the required entries in its A&D Book. Instead, General Store
17 used claim forms to record the movement of firearms to and from
18 manufacturers and gunsmiths. Since General Store was on notice that
19 this practice did not comply with § 478.125(e), but continued to
20 engage in the practice anyway, one may infer that General Store's
21 conduct was willful. See *Cucchiara*, 652 F.2d at 30. The fact that,
22 in General Store's opinion, the claim forms provided an accurate
23 record does not diminish its culpability. Licensees are not permitted
24 to adopt alternative methods of fulfilling the record-keeping
25 procedures specified by § 478.125(e) unless they first obtain approval
26 from the Director of Industry Operations. 27 C.F.R. § 478.125(h).

1 General Store never sought, much less received, such approval.

2 **FAILURE TO RECORD INFORMATION REGARDING SOURCE OF FIREARM**

3 Upon the receipt of a firearm, General Store was required to
4 record the person's name and address if the person did not hold a
5 federal firearms license or the person's name and FFL number if the
6 person did hold one. 27 C.F.R. § 478.125(e). General Store did not
7 always fulfill these requirements. If the person did not hold a FFL,
8 General Store typically recorded the person's name and driver's
9 license, but not his address. If the person held a FFL, General Store
10 typically recorded the person's name in a log, but not the number of
11 his FFL. General Store maintained a list of FFL numbers in a separate
12 book, which it kept near its firearms records.

13 The first issue is whether General Store willfully violated §
14 478.125(e) by recording the name and driver's license of a person who
15 did not hold an FFL. The relevant sentence of § 478.125(e) states,
16 "The record shall show the date of receipt, *the name and address or*
17 *the name and license number of the person from whom received*, the name
18 of the manufacturer and importer (if any), the model, serial number,
19 type, and the caliber or gauge of the firearm." (Emphasis added.)
20 Section 478.125(e) does not explicitly state that the term "license
21 number" refers to a federal firearms license, although this is clearly
22 implied. Consequently, General Store reasonably could have believed
23 that its practice of recording the name and driver's license (rather
24 than name and address) satisfied § 478.125(e). While General Store
25 was mistaken (and its mistake constitutes a violation of the
26 regulation), this particular violation of § 478.125(e) was not

1 willful.

2 The second issue is whether General Store willfully violated §
3 478.125(e) by failing to record the number of a federal licensee in
4 its A&D Book. General Store had engaged in this practice for some
5 time. However, during the 2000 and 2001 inspections, ATF inspectors
6 did not mention it. Their failure to do so does not prevent ATF from
7 revoking General Store's federal firearms dealer's license.
8 Nevertheless, the absence of a warning is relevant with respect to the
9 issue of willfulness; especially where, as here, there is no other
10 evidence that General Store was on notice it was violating §
11 478.125(e) by failing to record both the licensee's name and FFL
12 number in its A&D Book. Under the circumstances, this particular
13 violation was not willful.

14 **FAILURE TO NOTIFY CHIEF LAW ENFORCEMENT OFFICER**

15 In the State of Washington, a person who seeks to purchase a
16 pistol from a dealer must complete a prescribed application in
17 triplicate. RCW 9.41.090(5). The dealer must send a copy of the
18 application to the chief of police of the applicant's city of
19 residence (if the applicant resides in a city) or to the county
20 sheriff of the applicant's county of residence (if he does not reside
21 in a city). *Id.* This requirement is printed on the prescribed form.
22 (Declaration of Bruce Barany, ¶ 23, pp. 6-7.¹) Furthermore, during
23 1998 and 1999, General Store received written notification of this
24 requirement from federal and state authorities. Nevertheless, General
25 Store did not comply. Instead of sending a copy of the application to

26 ¹Neither party has submitted a copy of the form.

1 the chief law enforcement officer of the city or county in which the
2 applicant resided, General Store sent the copy to the Chief of Police
3 of the City of Spokane no matter where the applicant resided. The
4 issue is whether this practice violated 18 U.S.C. § 922(b)(2).²
5 General Store denies that it violated § 922(b)(2), much less that any
6 violation was willful. For one thing, General Store notes it had been
7 sending copies of the applications to Spokane's Chief of Police for
8 many years. No one ever objected. For another thing, General Store
9 submits that the instructions on the application form prescribed by
10 the State of Washington are ambiguous. Finally, General Store notes
11 that the written warnings issued by federal and state authorities came
12 before the 2000 and 2001 inspections. During neither inspection did
13 ATF mention the violation. General Store's arguments are
14 unpersuasive. As explained above, ATF was under no obligation to
15 issue a warning before revoking General Store's license. Moreover,
16 unlike the matter of General Store's failure to record FFL numbers,
17 General Store was on notice of the requirements imposed by RCW
18 9.41.090(5). Even if the instructions on the application were
19 confusing (an issue that the Court does not resolve), General Store
20 received letters from federal and state authorities during 1998 and
21 1999. Read together, the letters and the instructions on the form
22 provided General Store with adequate notice of the identify of the law

24 ²As will be recalled, this statute provides in part that it
25 is unlawful for a licensed dealer to sell or deliver "any firearm
26 to any person in any State where the purchase or possession by
such person of such firearm would be in violation of any State
law[.]"

1 enforcement officer to whom it was to send a copy of each pistol
2 application. Having received adequate notice, General Store's failure
3 to comply was a willful violation of 18 U.S.C. § 922(b)(2).

4 **FAILURE TO RECORD MISSING FIREARMS AS "DISPOSITIONS"**

5 During the 2003 inspection, General Store could not account for
6 88 firearms that were supposed to be in its inventory. Its A&D Books
7 did not list the missing firearms as dispositions. According to
8 General Store, this omission does not violate 27 C.F.R. § 478.125(e)
9 because the missing firearms were stolen or lost and the theft or loss
10 of a firearm is not a disposition within the meaning of § 478.125(e).

11 The terms "disposition" and "dispose of" appear in various
12 sections of the Gun Control Act. In *United States v. Jefferson*, 334
13 F.3d 670, 674 (7th Cir.2003), the Seventh Circuit examined the term
14 "dispose of" as used in 18 U.S.C. § 922(d)(1).³ The Seventh Circuit
15 ruled that a disposition of a firearm may be either commercial and
16 permanent (e.g., a sale) or gratuitous and temporary (e.g., a
17 bailment). 334 F.3d at 675. It seems likely that Congress intended
18 the term "disposition" to have an equally broad meaning in §
19 923(g)(1)(A). In view of the breadth of the term, an argument can be
20 made that thefts and losses are dispositions within the meaning of §
21 923(g)(1)(A). The Court might be persuaded were it not for the fact
22 that the subject of thefts and losses is addressed specifically by a
23 separate subsection of § 923(g). Subsection (g)(6) was added by the
24

25 ³Section 922(d)(1) states, "It shall be unlawful for any
26 person to sell or otherwise dispose of any firearm or ammunition
to any person knowing or having reasonable cause to believe that
such person . . . has been convicted of [a felony]."

1 Violent Crime Control Act of 1994, § 110305, Pub.L. No. 103-322, 108
2 Stat. 1796, 2013. It states, "Each licensee shall report the theft or
3 loss of a firearm from the licensee's inventory or collection, within
4 48 hours after the theft or loss is discovered, to the Attorney
5 General and to the appropriate local authorities." 18 U.S.C. §
6 923(g)(6).

7 The structure that is present in 18 U.S.C. § 923(g) -- one
8 section (§ 923(g)(1)(A)) specifically addressing dispositions; a
9 separate section (§ 923(g)(6)) specifically addressing thefts and
10 losses -- is also present in the regulations promulgated by the
11 Attorney General. Section 478.39a of 27 C.F.R. prescribes a
12 licensee's duties in the event of a theft or loss. Section 478.125(e)
13 prescribes a licensee's duties in the event of a sale or other
14 disposition.

15 General Store argues that § 478.39a trumps § 478.125(e) because
16 the former sets forth specific procedures for responding to thefts and
17 losses. It is true that, as a general rule, "the specific prevails
18 over the general." *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 916
19 (9th Cir.2005). Assuming this principle applies when interpreting
20 administrative regulations, it applies only when two regulations
21 conflict with each other. See *Nat'l Cable & Telecomm. Ass'n, Inc. v.*
22 *Gulf Power Co.*, 534 U.S. 327, 335-36, 122 S.Ct. 782, 787, 151 L.Ed.2d
23 794 (2002). For example, two regulations arguably would conflict if a
24 person could not comply with one of them without violating the other.
25 Here, there is no conflict. It is not unreasonable to expect a
26 licensee to make the calls and prepare the reports that are required

1 by § 478.39a and, at the same time, make the entries in its A&D Book
2 that are required by § 478.125(e). And it makes sense, as a matter of
3 public policy, for a licensee to do both. Thus, the fact that §
4 478.39a establishes specific procedures for reporting the theft or
5 loss of firearms does not excuse a licensee from complying with the
6 more general procedures that are established by § 478.125(e) if §
7 478.125(e) also applies.

8 But the manner in which § 478.125(e) uses the term "disposition"
9 does not suggest that it includes thefts and losses. Section
10 478.125(e) repeatedly refers to a disposition as a "transaction"
11 (sixth, seventh, and eighth sentences of the regulation). Furthermore,
12 § 478.125(e) contemplates that a dealer will make dispositions of
13 firearms to two classes of transferees: "nonlicensees" (seventh
14 sentence) and "licensees" (eighth sentence). In both cases, §
15 478.125(e) presumes the dealer knows the name of the transferee and
16 the date upon which the transfer of firearms occurred (ninth
17 sentence). Otherwise, it would be difficult for a dealer to record
18 the information required by § 478.125(e). Perhaps, then, it is
19 unsurprising that § 478.125(e) makes no reference to thefts or losses.
20 This issue is addressed by § 478.39a. The latter imposes specific
21 requirements upon licensees in the case of thefts and losses; but in
22 doing so, it makes no reference to dispositions. This is consistent
23 with the view that a disposition does include a theft or a loss.

24 In sum, while Mr. Van Loan's interpretation of § 478.125 may
25 represent sound public policy, it is questionable whether his
26 interpretation is supported by the text of the regulation. That is to

1 say, it is questionable whether the theft of a firearm from, or the
2 loss by, a federally licensed firearms dealer constitutes a
3 disposition within the meaning of paragraph (e) of § 478.125.
4 However, given the Court's preceding determinations, the Court need
5 not resolve this issue in order to adjudicate the parties' summary
6 judgment motions. Moreover, the Court is hesitant to do so where, as
7 here, the parties have not discussed whether Mr. Van Loan's
8 interpretation is entitled to deference. *Cf. United States v.*
9 *Orellana*, 405 F.3d 360, 369 (5th Cir.2005) ("in a recent case, the
10 Government expressed reservations as to whether [27 C.F.R. § 478.11]
11 as a whole is entitled to any level of deference whatsoever").⁴

12 CONCLUSION

13 The Attorney General is authorized to revoke the license of a
14 federal firearms dealer based upon a single, willful violation of the
15 Gun Control Act or the regulations promulgated thereto. See
16 *Appalachian Resources. v. McCabe*, 387 F.3d 461, 464 (6th Cir.2004).
17 Here, the record reflects that General Store committed at least two
18 willful violations. To begin with, General Store willfully violated
19 27 C.F.R. § 478.125(e) by failing to record the transfer of firearms
20 to a manufacturer or a gunsmith as a disposition in its A&D Book and
21 by failing to record the receipt of returning firearms as an

23 ⁴Following the procedure set forth in § 478.39a, General
24 Store reported certain firearms as stolen. General Store did not
25 record the thefts as dispositions in its A&D Book. Later, it
26 recovered some of the firearms that it had reported as stolen and
sold some of them. If its interpretation of § 478.125(e) is
correct, General Store did not violate that regulation by failing
to record the original thefts as dispositions.

1 acquisition in its A&D Book. In addition, General Store willfully
2 violated 18 U.S.C. § 922(b)(2) by failing to send copies of pistol
3 applications to the chief of police of the applicant's city of
4 residence (if the applicant resided in a city) or to the county
5 sheriff of the applicant's county of residence (if the applicant did
6 not reside in a city). In view of these willful violations, Mr. Van
7 Loan was authorized to revoke General Store's firearms dealer's
8 license. 18 U.S.C. § 923(f)(3). See *Perri*, 637 F.2d at 1336-37. He
9 is entitled to summary judgment.

10 **IT IS HEREBY ORDERED:**

11 1. General Store's motion for summary judgment (**Ct. Rec. 30**) is
12 **denied.**

13 2. Mr. Van Loan's motion for summary judgment (**Ct. Rec. 25**) is
14 **granted in part.**

15 3. Provision "3" of the Court's order of May 19, 2006, is
16 vacated.

17 4. General Store's petition for judicial review (**Ct. Rec. 1**) is
18 **denied.**

19 **IT IS SO ORDERED.** The District Court Executive is hereby
20 directed to enter this order and furnish copies to counsel.

21 **DATED** this 24th day of January, 2007.

22
23 s/ Fred Van Sickle
24 Fred Van Sickle
25 United States District Judge
26